

MINUTES

ALCOHOL AND TOBACCO COMMISSION

NOVEMBER 18, 2008

CALL TO ORDER/NOTING OF QUORUM

Chairman Heath called the meeting to order and noted the quorum and the attendance. Present were Vice Chairman Johnson, Commissioner Guthrie and Commissioner Sturtz. Also in attendance were Superintendent Huskey and Major Poindexter.

Jeff McKean, Bart Herriman, Debbie Scott, Brad Klopfenstein, Trevor Vance, and Mark Webb were present as observers.

DISPOSITION OF MINUTES

Commissioner Sturtz moved to approve the minutes that were submitted for the November 5, 2008 meeting. Motion seconded by Commissioner Guthrie and it was unanimously approved.

HEARING JUDGE'S RECOMMENDATIONS

PAD FORMS – Vice Chairman Johnson moved to approve the parties agreed disposition forms that were submitted for the November 18, 2008 meeting. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR49-06080 DUNGEON, INC. – Commissioner Guthrie noted the renewal of this permit is currently under appeal from a denial. The Permittee and the remonstrators have submitted a Settlement Agreement for recommendation to the Commission.

Commissioner Guthrie moved to accept the Agreement between the parties. Motion seconded by Commissioner Sturtz and it was unanimously approved.

DL05-12124 GASAMERICA SERVICES, INC. – This was a recommended denial by the Blackford County Local Board and an upholding of that denial by the Commission. The applicant filed a timely notice of appeal and the matter was set for hearing. The Hearing Judge now tenders her Proposed Findings of Fact and Conclusions of Law for recommendation by the Commission.

Vice Chairman Johnson moved to uphold the Hearing Judge's recommendation and deny the new permit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

DL57-23122 GASAMERICA SERVICES, INC. - This was a recommended denial by the Noble County Local Board and an upholding of that denial by the Commission. The

applicant filed a timely notice of appeal and the matter was set for hearing. The Hearing Judge now tenders her Proposed Findings of Fact and Conclusions of Law for recommendation by the Commission.

Vice Chairman Johnson moved to uphold the Hearing Judge's recommendation and approve the new permit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

CONSIDERATION OF APPLICATIONS

I incorporate by reference these lists of permits for renewal, which have been recommended by local boards and reviewed by said staff with the authority of the Commission, and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

I incorporate by reference these lists of permit applications for a new permit or application for changes in location or ownership or both of existing permits, which have been recommended by local boards and reviewed by at least two Commissioners and hereby move for approval of same and inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

I incorporate by reference these lists of permit applications for catering and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

I incorporate by reference these lists of permits to be placed in escrow for not more than one year, which have been reviewed and recommended by a Commissioner as appropriate for first or second year escrow and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

Three hundred two (302) renewals approved, seventy-nine (79) new and/or transfer permits approved, six (6) permits approved for catering, four (4) permits approved for first year escrow, six (6) permits approved for second year escrow, three (3) permits approved for third year escrow and three (3) permits approved for fourth year escrow.

RENEWAL LETTERS AND WAIVER OF FEES

Vice Chairman Johnson moved to approve the renewal letters and the waiver of fees for letters of extension for the preceding weeks. Motion seconded by Commissioner Sturtz and it was unanimously approved.

APPLICATIONS FOR DISCUSSION

RR34-10317 ULTIMATE PLACE, LLC – Commissioner Guthrie moved to accept the Howard County Superior Court’s Findings and approve the renewal. Motion seconded by Commissioner Sturtz and it was unanimously approved.

DL70-25102 HERDRICH PETROLEUM CORPORATION, D/B/A DOWNTOWN SHELL – Chairman Heath noted this is a new type 115 application with the local board voting two (2) to one (1) to disapprove.

Commissioner Guthrie stated the evidence presented at the local board hearing substantially favored the permittee in this case.

Commissioner Guthrie moved to reverse the local board’s recommendation and approve the new permit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR49-00098 T.P.C. 1, INC. – Commissioner Guthrie moved to convert this type 209 permit in Marion County back to a type 210 permit in the city of Lawrence. The permit was originally a type 210, but it is unclear as to why it was changed to a type 209. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

DL45-02618 ECONOMY PACKAGE LIQUORS, INC. –Chairman Heath noted this is a type 217 transfer of ownership and location with the local board voting three (3) to zero (0) to disapprove.

Commissioner Guthrie moved to uphold the local board’s recommendation and deny the transfers. Motion seconded by Commissioner Sturtz and it was unanimously approved.

DL41-25422 MAC’S CONVENIENCE STORES, LLC, D/B/A CIRCLE K #0016 – Chairman Heath noted this is a new type 116 application with the local board voting two (2) to zero (0) to disapprove.

Commissioner Guthrie stated two of the local board members stated the orange notification sign was not properly displayed, and the applicant did not meet the burden of proving there was a need for the permit, and; therefore, voted to deny. However, the Excise member of the board stated the orange was displayed in a proper manner. There were no remonstrators present at the hearing.

Commissioner Guthrie moved to reverse the local board’s recommendation and approve the new permit. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

RR29-98429 ANNIE’S COVE, LLC – Chairman Heath noted this is a type 112 renewal application with the local board voting three (3) to zero (0) to disapprove.

Commissioner Guthrie stated the permittee did not attend the local board meeting as requested and also that the business appears to be closed.

Commissioner Guthrie moved to uphold the local board's recommendation and deny the renewal. Motion seconded by Commissioner Sturtz and it was unanimously approved.

INACTIVE FILES

PERMITS MADE INACTIVE – Vice Chairman Johnson moved to make three (3) permits inactive. All three (3) permits are not subject to auction. Motion seconded by Commissioner Sturtz and it was unanimously approved.

REVOCATION HEARING – Vice Chairman Johnson moved to declare the following permits inactive due to the fact that they did not appear for their revocation hearing:

RR49-20800, RR45-00888, DL64-22314, DL39-14074, RR49-02651, RR53-21654, RR49-19899, RR49-19131, RR49-23499, DL29-90170, DL49-14000, RR29-20190, DL29-03315, DK55-20155, RR45-04567, DL40-98538, RR83-93310, DL30-18463, RR41-21682, RR49-21540, RC84-14111, DL87-93274, RR49-20909, RR49-20788, RR49-20886, RR49-96047, RR49-19371, R49-22094, RR49-18640, CH49-21879, RR32-21762, RR73-22331, RR29-21443, RR29-22301, RR49-93040, RR32-21764, RR32-93364, RR29-18910

Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR45-85352 CAFÉ VENEZIA AND RR64-23312 LAKESHORE WINGS – Commissioner Guthrie moved to continue the revocation hearing for these permittees. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

OLD BUSINESS

No Old Business

NEW BUSINESS

No New Business

POLICY DETERMINATIONS

No Policy Determinations

ANNOUNCEMENTS

No Announcements

ADJOURNMENT

Commissioner Sturtz moved to adjourn the meeting. Motion seconded by Commissioner Guthrie and it was unanimously approved.

Approved this _____ day of _____, 2008.

DAVE HEATH, CHAIRMAN

DAVID JOHNSON, VICE CHAIR

DALE STURTZ, COMMISSIONER

FRANK GUTHRIE, COMMISSIONER